

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEWPORT BEACH
AND
THE NEWPORT BEACH
FIREFIGHTERS ASSOCIATION



January 1, 2012 through June 30, 2014

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEWPORT BEACH
AND
THE NEWPORT BEACH FIREFIGHTERS ASSOCIATION**

TABLE OF CONTENTS

Preamble

Section 1. General Provisions

Recognition.....	1
Duration of Memorandum.....	2
Release Time.....	2
Scope	3
Bulletin Boards	4
Dues Check-off	4
Maintenance of Membership	4
Conclusiveness	5
Modifications	5
Savings	5
Impasse.....	5
Definitions	6

Section 2. Compensation

Salary Adjustments - this MOU Period	6
Overtime – Hours Worked.....	8
Required Uniform	8
Scholastic/Certificate Achievement Pay	9
Special Assignment Pay.....	10
Temporary Upgrading of Employees.....	11
Paramedic Compensation	13
Y-Rating	13
Shift Holdover.....	13
Emergency Recall	13
Bilingual Pay	14
Court Standby Pay	14

Section 3. Leaves

Flex Leave.....	14
Telestaff System	17
Vacation/Sick Leave.....	17
Holiday Time	19

Bereavement Leave	20
Catastrophic Leave	20
Jury Duty	20
Sick Leave Pay Out.....	20
Flex Leave Premium Pay Account	21
Vacation Leave Premium Pay Account	21
Worker's Compensation Leave	21
Scheduling of Medical Treatment for Industrial Injuries.....	22
Reassignment	22

Section 4. Fringe Benefits

Insurance	23
Additional Health Insurance/Programs	24
Employee Assistance Program	25
The Retirement Benefit	25
Retiree Medical Benefit	29
Tuition Reimbursement and Training	33
Fitness Program	35
Physical Conditioning Equipment.....	35

Section 5. Miscellaneous Provisions

Reduction in Force/Layoffs.....	36
Discipline Plan.....	39
Fire Suppression Equipment Staffing Levels.....	39
EMT Certification... ..	39
No Smoking.....	39
Fire Inspection Classifications.....	39
Exposure Log	40
Grievance Procedure	40
48/96 Schedule	40
Exhibit A – Represented Classifications.....	42

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF NEWPORT BEACH AND THE
NEWPORT BEACH FIREFIGHTERS ASSOCIATION

Term: January 1, 2012 through June 30, 2014

This MEMORANDUM OF UNDERSTANDING (hereinafter referred to as "MOU") is entered into with reference to the following:

1. The Newport Beach Firefighters Association, International Association of Firefighters, Local 3734 ("NBFA"), a recognized employee organization, and the City of Newport Beach ("City"), a municipal corporation and charter city, have been meeting and conferring, in good faith, with respect to wages, hours, fringe benefits and other terms and conditions of employment.
2. NBFA representatives and City representatives have reached a tentative agreement as to wages, hours and other terms and conditions of employment for the period from *January 1, 2012 to June 30, 2014* and this tentative agreement has been embodied in this MOU.
3. The City acknowledges and appreciates the cooperation of NBFA during the meet and confer process leading to the adoption of the 2012-2014 MOU.
4. This MOU, upon approval by NBFA and the Newport Beach City Council, represents the total and complete understanding and agreement between the parties regarding all matters within the scope of representation.

SECTION 1. – GENERAL PROVISIONS

A. Recognition

In accordance with the provisions of the Charter of the City of Newport Beach, the Meyers-Milias-Brown Act of the State of California and the provisions of the Employer's/Employee Labor Relations Resolution No. 2001-50, the City acknowledges that NBFA is the majority representative for the purpose of meeting and conferring regarding wages, hours and other terms and conditions of employment for all employees in those classifications specified in Exhibit "A" or as appropriately modified in accordance with the Employer/Employee Resolution. All other classifications and positions not specifically included within Exhibit "A" are excluded from representation by NBFA.

B. Duration of Memorandum

1. Except as specifically provided otherwise, any ordinance, resolution or action of the City Council necessary to implement this MOU shall be considered effective as of *January 1, 2012*. *This MOU shall remain in full force and effect until June 30, 2014*, and the provisions of this MOU shall continue after the date of expiration of this MOU in the event the parties are meeting and conferring on a successor MOU.

The parties agree that, if NBFA submits preliminary requests for changes in wages, fringe benefits and other terms and conditions of employment earlier than 90 days prior to expiration of the MOU, the parties will begin negotiations promptly, with the objective of reaching an *agreement by June 30, 2014*.

2. The terms and conditions of this MOU shall prevail over any conflicting provisions of the Newport Beach City Charter, the ordinances, resolutions and policies of the City of Newport Beach, and federal and state statutes, rules and regulations which either specifically provide that agreements such as this prevail, confer rights which may be waived by any collective bargaining agreement, or are, pursuant to decisional or statutory law, superseded by the provisions of an agreement such as, or similar to, this MOU.

C. Release Time

1. NBFA members shall be allowed to participate in the following activities and receive full pay ("Release Time"):
 - a. Attendance at meetings, conferences, seminars or workshops related to matters within the scope of representation;
 - b. To prepare for, travel to, and attend scheduled meetings between the City and NBFA during the meet and confer process.
2. City grants NBFA 400 hours of Release Time per calendar year to engage in the activities described in subsection 1(a). Unused hours from any calendar year may be carried over to the next year not to exceed a total City provided release time accrual of three hundred (300) hours.

3. City grants NBFA members the right to engage in the activities described in subsection 1(b) at any time without reduction to the Release Time granted in subsection 2.
4. NBFA shall designate certain members as those members entitled to release time. In no event shall any one designate be entitled to use more than 100 hours (150 hours for the Association President only) of Release Time (exclusive of actual time spent meeting with City representatives on matters relating to the scope of representation), within any calendar year. Designates must give reasonable advance notice to, and obtain permission from, their supervisor prior to use of Release Time. Requests for Release Time shall be granted by the supervisor unless there are specific circumstances that require the designate to remain on duty. Designates shall, to the maximum extent feasible, receive shift assignments compatible with participation in the meet and confer process.
5. In addition to City-provided Release Time and Release Time provided pursuant to subparagraph (3), NBFA members may contribute earned paid time off to an NBFA Release Time Bank. Members may contribute earned time only during the period from July 1 through August 15th during any calendar year. However, members shall not have the right to contribute time to the NBFA Release Time bank if NBFA has accumulated more than 600 hours of total Release Time. Any NBFA member who contributes time to the Release Time Bank gives up any right to usage of, or payment for, the contributed time. Contributions may be made only in six-minute increments. Contributions shall be on forms prepared by the City which shall then be submitted to the appropriate department employee. City shall advise NBFA as to the balance of hours in the Release Time Bank upon request. For purposes of this subparagraph only, the term "time off" includes accrued flex leave, accrued vacation leave, and accrued holiday time.

D. Scope

1. All present written rules and currently established practices and employee rights, privileges and benefits that are within the scope of representation shall remain in full force and effect during the term of this MOU unless specifically amended by the provisions of this MOU, or in the case of the Department SOP's falling within the scope of representation, the City has given notice to the Association and, upon request, met and conferred on any proposed changes which fall within the scope of representation.

When the Department proposes to change any SOP departmental rule or regulation, it will provide a copy of such change to the Association no less than seven (7) days prior to implementation of the proposed change. If such proposed change materially impacts any matter within the scope of representation, then the parties agree to meet and confer over such impact.

2. Pursuant to this MOU, the City reserves and retains all of its inherent exclusive and non-exclusive managerial rights, powers, functions and authorities ("Management Rights") as set forth in Resolution No. 2001-50.

E. Bulletin Boards

1. Space shall be provided on bulletin boards within the Fire Department at their present location for the posting of notices and bulletins relating to NBFA business, meetings, or events. All materials posted on bulletin boards shall indicate the name of the organization responsible. Material posted shall not contain personal attacks on any City official or employee, any material which constitutes harassment, discrimination or retaliation on the basis of race, gender, ethnicity, religion, *age*, *sexual orientation* or other statutorily or constitutionally impermissible basis, as well as any pornographic or obscene material.
2. Material posted and messages sent through electronic mail (E-Mail) shall not contain personal attacks on any City official or employee, any material which constitutes harassment, discrimination or retaliation on the basis of race, gender, ethnicity, religion, *age*, *sexual orientation*, or other statutorily or constitutionally impermissible basis, as well as any pornographic or obscene material. E-Mail may be used for Association business on a limited basis and consistent with Department Policy.

F. Dues Check-off

NBFA members shall have the right to authorize the City to deduct regular monthly NBFA dues from their bi-weekly paycheck. The City shall deduct payment of NBFA dues when the employee has authorized such deduction and City shall remit all payments to NBFA in accordance with the terms of each member's authorization.

G. Maintenance of Membership

Any employee in this Unit who has authorized association deductions on the effective date of this Agreement, or at any time subsequent to the effective date of this Agreement, shall continue to have such dues

deductions made by the City during the term of this Agreement, provided that any employee in the Unit may terminate such Association dues by submitting a signed request to cancel payroll deduction to the Human Resources Director. This signed request shall be followed up with a second request at a time between 30 and 45 days of the original letter. The Association shall indemnify the City and hold it harmless against any and all suits, claims, demands and liabilities that may arise out of or by reason of the application or implementation of the provisions of this section.

H. Conclusiveness

This MOU contains all of the covenants, stipulations, and provisions agreed upon by the parties. Therefore, for the life of this MOU, neither party shall be compelled to meet and confer concerning any issue within the scope of representation except as expressly provided herein or by mutual agreement of the parties. No representative of either party has the authority to make, and none of the parties shall be bound by, any statement, representation or agreement reached prior to the execution of this MOU and not set forth herein.

I. Modifications

Any agreement, alteration, understanding, variation, or waiver or modification of any of the terms or provisions of this MOU shall not be binding upon the parties unless contained in a written document executed by authorized representatives of the parties.

J. Savings

Should any part of this MOU be rendered or declared illegal or invalid by legislation, decree of court of competent jurisdiction or other established governmental administrative tribunal, such invalidation shall not affect the remaining portions of this MOU provided, however, should the provisions of this MOU relating to salary increases, fringe benefits, or the compensation policy be declared invalid the City shall provide alternative forms of compensation such that NBFA members suffer no financial detriment by virtue of the decision or ruling with the manner and form of the compensation to be determined by the parties after meeting and conferring in good faith.

K. Impasse

In the event of an impasse (the failure to agree on a new MOU after the express term of the existing MOU has expired), the parties may agree on mediation pursuant to the procedure outlined in Section 16 of Resolution No. 2001-50 or a successor resolution.

L. Definitions

For the purposes of this MOU these terms shall have the following meanings:

1. The term "member" or "NBFA member" shall mean all persons within classifications represented by NBFA.
2. The term "staff employee" shall mean any NBFA member who is assigned to work an average 40-hour workweek.
3. The term "line employee" shall mean any NBFA member assigned to work an average 56-hour workweek in 24-hour shift increments.
4. The term "Municipal Fire Departments in Orange County" or "Municipal Fire Departments" shall mean all City operated Fire Departments and the Orange County Fire Authority.

SECTION 2. – COMPENSATION

A. Salary Adjustments – this MOU Period

1. *Effective the first payroll period commencing on or after January 1, 2013, there shall be a base salary increase of not less than 1.0%, nor more than 2.0%. The precise amount of the increase shall be determined with reference to the percent increase in the Consumer Price Index (All Urban Consumers) for the Los Angeles, Riverside, Orange County areas for the 12 consecutive months ending on November 30, 2012. If there is either no increase in the CPI or the increase is less than or equal to 1.0%, the base salary increase shall be 1.0%. If the increase is greater than 1.0%, the base salary increase shall be in the same amount, but in no event, greater than 2.0%.*
2. *Effective the first payroll period commencing on or after January 1, 2014, there shall be a base salary increase of not less than 1.0%, nor more than 2.0%. The precise amount of the increase shall be determined with reference to the percent increase in the Consumer Price Index (All Urban Consumers) for the Los Angeles, Riverside, Orange County areas for the 12 consecutive months ending on November 30, 2013. If there is either no increase in the CPI or the increase is less than 1.0%, the base salary increase shall be If there is either no increase in the CPI or the increase is less than or equal to 1.0%, the base salary increase shall be 1.0%. If the increase is greater than 1.0%, the base salary increase shall be in the same amount, but in no event, greater than 2.0%.*

3. The adjustments to salary and total compensation described in this Section shall maintain the salary differentials between the position of Firefighter (benchmark position) and the other positions represented by NBFA, as set forth below, so there is an appropriate internal relationship among the primary classifications represented by NBFA. Subject to the foregoing, the salaries specified below or total compensation, as appropriate, shall be subject to the following guaranteed adjustments:

<u>Firefighter Series</u>	<u>Percent of Firefighter Top Step</u>
Firefighter	N/A
Engineer	112.50%
Paramedic	122.25%
Line Captain	132.00%
<u>Fire Prevention Series</u>	<u>Percent of Fire Inspector, Non-safety Top Step</u>
Fire Inspector, Non-safety	N/A
Fire Engineer/PSI	115%
Fire Prevention Specialist, Non-safety*	116.5%
Fire Engineer/PCI	125%
Fire Prevention Specialist Plan Check, Non-safety*	126.5%

*Special Provision

Staff Captains shall receive an additional 7.5% of base pay over Line Captains.

Special Step Increase

Firefighters who successfully complete the Department Engineer Certification program within twelve (12) months of passing probation will be granted a salary step increase. Firefighters attending Paramedic School before two years of employment will upon returning from school have 12 months to complete the Engineer Certification program. Once engineer certification program is successfully completed, the member will be entitled to a salary step increase.

B. Overtime – Hours Worked

1. *FLSA Overtime shall consist of authorized work hours worked in excess of the maximum number of hours permitted by the United States Department of Labor regulations pursuant to the FLSA 7(k) exemption for a work period to be determined by the City. Use of Flex Leave, Vacation Leave, Holiday Leave, and Sick Leave shall not be considered as hours worked for the purposes of determining eligibility for FLSA Overtime.*

Contract Overtime shall consist of authorized work in excess of a unit member's normal number of work hours in any scheduled work shift, and shall be paid at time and a half. Use of Flex Leave, Vacation Leave, Holiday Leave, and Sick Leave shall be considered as hours worked for the purposes of determining eligibility for Contract Overtime pay.

2. Temporary vacancies in line positions shall be selected in accordance with Department S.O.P.
3. Qualified employees wishing to work voluntary overtime in a class lower than their current class (downgrade) may volunteer to do so and shall be compensated at one and one-half times the highest hourly rate for the position as published in the City's compensation plan. Said employees shall be selected according to the provisions set forth in the Department's Standard Operating Procedures related to staffing and overtime. This provision applies only to persons wishing to downgrade to the position of Firefighter, Fire Engineer or Paramedic.
4. Personnel assigned to staff assignments may request compensatory time off in lieu of paid overtime with the approval of the Department. Compensatory time may be granted, subject to maximum accrual of eighty (80) hours, *and subject to Department consideration of the impact of said CTO use on overtime liability and other efficiency requirements of the Department.*

C. Required Uniform

City shall pay the entire cost of providing NBFA member with each component of the required NBFD uniform. The required NBFD uniform includes safety shoes, badges and insignias, uniform pants, uniform shirts,

uniform jackets and liner, belts, work out shirts, work out trunks, sweatshirt, base camp hat, and baseball cap. City shall not be responsible for providing employee with socks, underwear, or workout shoes, or other clothing.

The City shall report the value of the required uniform at \$1719 to PERS.

The City will provide each fire suppression member with a set of front-line turnout gear and an adequate number of reserve turnouts at each station to allow for proper turnout cleaning/decontamination. Reserve turnouts may be personally issued to each member at the Fire Chief's discretion. This equipment will be used to temporarily replace an employee's personal turnout equipment that cannot be placed in service because they are wet, contaminated, or aged.

D. Scholastic/Certificate Achievement Pay

NBFA members are entitled to additional compensation contingent upon scholastic achievement ("Scholastic/Certificate Achievement Pay"). NBFA members may apply for increases pursuant to this Section when eligible and scholastic and/or certificate achievement pay shall be included in the member's paycheck for the pay period immediately after approval by the Fire Chief. It is the responsibility of the NBFA member to apply for Scholastic and/or Certificate Achievement Pay. Approval of the member's application shall not be unreasonably withheld or delayed, and the member shall not be entitled to receive scholastic and/or certificate achievement pay prior to the date the application is approved even though the member may have been eligible prior to approval.

As to unit members whose starting date was prior to the City Council adoption of this 2012-2014 MOU, scholastic and/or Certificate achievement pay is contingent upon years of service and number of units and/or degrees received by the employee. Qualifying units and/or degrees must be awarded by accredited community colleges, state colleges or universities. NBFA members shall receive scholastic and/or certificate achievement pay in accordance with the following:

1. Scholastic Pay

<u>Years of Service:</u>	<u>College Semester/Unit:</u>	<u>% of Actual Step in Job Class Range:</u>
2 or more	30	1.5%/month
3 or more	60	2.5%/month
3	90	3.5%/month
4 or more	90	3.5%/month

4	120	4.5%/month
2 or more	A.A./A.S.*	3.5%/month
4	B.A./B.S.	5.5%/month

** Effective concurrent with Council adoption of the 2012-2014 MOU.*

The unit members hired on and after City Council adoption of this 2012-2014 MOU shall be ineligible for any scholastic pay based upon having obtained units only.

A "degree" shall be awarded by an institution accredited by the State of California, the United States Department of Education, the Council for Higher Education, or the Distance Education Training Council.

5. Certificate Pay

Successful completion of coursework for Fire Officer I or Fire Prevention Officer II shall entitle the member to 3%/month in Certificate Pay.

E. Special Assignment Pay

The following additional payments shall be made to certain NBFA members based on assignment:

1. Individuals properly trained and assigned by the Department to perform special assignments shall be compensated as follows:

<u>Assignment</u>	<u>Maximum Number*</u>	<u>Compensation (% of base pay)</u>
Shift Fire Investigator	6	5%
Radio/MDC	1	5%
SCBA	3	2%
Map/Preplan	1	2%

Special assignment compensation shall cease when individuals are no longer performing the assignment.

**Subject to modification by the department.*

2. Should the City establish a Tactical Paramedic Assignment and/or an Urban Search and Rescue Team, it will give notice to and, upon request, meet and confer with the Association on those aspects of the program which fall within the scope of representation.

3. Temporary Special Assignment Pay

Temporary Special Assignment pay will be at the rate of the special assignment. The types and duration of these temporary assignments will remain a management prerogative.

Committee participation such as Safety Committee, and work on various projects such as Public Safety Day and the CERT Program are excluded from consideration under this Agreement.

F. Temporary Upgrading of Employees

1. Move up Assignment

A move up assignment shall be defined as the temporary assignment of an employee to work in a job classification which is higher than his or her current classification. A move up employee need not meet the minimum requirements for the position to which they are moved up to. Employees who do meet the minimum requirements for the position shall be deemed "Acting Appointments" after their 6th consecutive shift.

If the employee is moved-up for five (5) hours or more, the move-up compensation shall be computed as follows:

Firefighter to Engineer	Regular rate +5%
Firefighter to Paramedic	Regular rate +22.4095% (Step C min.)
Firefighter to Captain	Regular rate +5%
Engineer to Paramedic	Regular rate +8.935% (Step C min.)
Engineer to Captain	Regular rate +5%
Paramedic to Captain	Regular rate +5%
Captain to Battalion Chief	Regular rate +9.5%

All holiday, vacation, sick leave and paid leave shall be paid at the employee's regular rate of pay. Time accumulated working in a move up position shall-not be applied towards the probationary period or count as "time in rank" for the purpose of seniority.

A move up employee who completes the minimum requirements for the position while working in the move-up classification shall be deemed an "Acting Appointment" effective the date the minimum qualification is met.

The following positions shall be considered for move-up assignments:

Fire Battalion Chief
Fire Captain

Fire Paramedic
Fire Engineer

Assignment to the move up position shall be made at the sole discretion of the Fire Chief and are limited to a maximum time period of 360 days.

2. Acting Appointments

The formal and expressed assignment of an employee to perform the significant duties and responsibilities of a higher classification for more than six (6) consecutive shifts shall be deemed an acting appointment. All acting appointees must satisfy the minimum requirements for the position to which they are appointed.

Acting employees, except acting paramedics, shall be compensated in the salary range of his/her acting classification at a rate that is at least five (5%) percent higher than their current rate. Acting paramedics shall be compensated at a rate no lower than paramedic salary classification Step 3. All holiday, vacation, sick leave and paid leave shall be paid at the employee's new rate of pay.

In the event the acting employee is subsequently appointed to the higher classification, the time accumulated while acting in the higher classification shall be applied towards the probationary period and count as "time in rank" for the purpose of seniority.

If an acting employee is returned to his/her former classification for more than six (6) months, he/she will not be credited with the time accumulated in the acting position for the purposes of probation or as "time in rank" for the purpose of seniority.

Acting appointments shall be made at the sole discretion of the Fire Chief and are limited to a maximum time period of 180 days.

3. Tiller Assignment

Employees temporarily upgraded to Tiller shall receive a five (5%) pay differential over their regular rate of pay for all time worked in this job classification if they are assigned to work in this job classification for a period of four (4) working hours or longer.

G. Paramedic Compensation

Employees sent to Paramedic School or working as a paramedic will be compensated at a rate no lower than Step 3 in the paramedic salary job class range.

In the event the employee fails, drops out of Paramedic School, is not assigned or demotes for any reason, they will return to the salary of their previous classification with their original time in rank plus time spent as a paramedic. Assignment to Paramedic School shall not be construed as assignment to position for the purposes of probation.

H. Y-Rating

Employees who are reclassified to a position with a lower maximum salary shall be Y-rated. Y-rating shall refer to a pay rate outside of the assigned salary range of the employee.

If the salary of the employee is greater than the maximum of the new range, the salary of the employee shall be designated as a Y-rate and shall not change during continuous regular service until the maximum of the new range exceeds the salary of the employee.

If the salary of the employee is the same or less than the maximum of the new class, the salary and merit increase eligibility date of the employee shall not change.

I. Shift Holdover

NBFA members who are held over at the conclusion of any shift shall be compensated at the rate of one hour for each hour, or portion thereof, the employee worked beyond the end of the shift. Any member held over after shift shall be compensated at time and a half for all time worked during the work period in excess of the maximum permitted under the provisions of Section 29 USC 507(k).

J. Emergency Recall

If an employee who is not on stand-by or shift hold-over and is required to return to work during his/her off-duty hours for actual firefighting, or similar emergency designated by the Department Director, the employee shall receive a minimum of four (4) hours compensation for the first hour worked and compensation for time worked thereafter.

K. Bilingual Pay

Employees certified as bilingual (Spanish) shall be eligible to receive One Hundred Fifty (\$150.00) Dollars per month in bilingual pay. The certification process will confirm that employees are fluent at the street conversational level in speaking, reading and writing Spanish. Employees certified shall receive bilingual pay the first full pay period following certification.

Additional languages may be certified for compensation pursuant to this section by the Fire Chief.

L. Court Standby Pay

NBFA members who, pursuant to subpoena compelling attendance to testify to acts, observations, or omissions occurring in the course and scope of employment or at the direction of their supervisor, are required, while off-duty, to remain within a certain response time from court, shall be considered to be on "court standby time" and shall receive four (4) hours of pay for each eight hours of court standby time. NBFA members shall, when required to appear in court pursuant to a Subpoena or the direction of their supervisor to testify at to matters relating to their employment with the City, be considered to be on duty and shall be paid accordingly. Members shall remit all witness fees received for testifying or appearing on any matter for which the member is eligible to receive court standby time.

SECTION 3. - LEAVES

A. Flex Leave

1. Effective December 22, 2007, NBFA members shall accrue flex leave as follows. It is mutually understood that accrual rates have been modified to provide for the longevity increase set forth below.

<i>Leave</i>	<i>Accrual</i>	<i>Longevity Pay</i>
<u>Years of Cont. Svc</u>	<u>Hours/Pay Period</u>	<u>Increase</u>

Line Employees

1 but less than 5	9.77	0.00%
5 but less than 9	10.69	0.00%
9 but less than 12	11.62	0.00%
12 but less than 16	12.54	0.00%
16 but less than 20	12.54	1.5%
20 but less than 25	12.54	2.5%
25 and over	12.54	3.5%

<u>Leave</u>	<u>Accrual</u>	<u>Longevity Pay</u>
<u>Years of Cont. Svc</u>	<u>Hours/Pay Period</u>	<u>Increase</u>

Staff and Non-Safety
Employees

1 but less than 5	6.97	0.00%
5 but less than 9	7.63	0.00%
9 but less than 12	8.33	0.00%
12 but less than 16	8.95	0.00%
16 but less than 20	8.95	1.5%
20 but less than 25	8.95	2.5%
25 and over	8.95	3.5%

Longevity increases specified above shall be reported to PERS as special compensation and shall be regarded as compensation earnable as defined in Government Code §20636(c)(1) for purposes of computing retirement benefits and contributions.

2. The Flex leave program shall be administered as follows:

- a. NBFA members shall not accrue flex leave until continuously employed by the Newport Beach Fire Department for a period of six (6) months provided, however, if a member on the flex leave program becomes sick during the first six months of employment, the City will advance up to six (6) months of accrual for line employees for use by the member to recover from illness.

In the event the City advances paid leave time and the employee is terminated or resigns before completing six months of continuous employment, the member's final check shall be reduced by an amount equal to the number of flex leave hours advanced multiplied by the member's hourly rate of pay.

- b. NBFA members who are staff or non-safety employees shall accrue six (6) months of flex leave and line employees shall accrue six (6) months of flex leave immediately upon completion of six (6) months continuous employment with the Newport Beach Fire Department, provided however, this amount shall be reduced by any flex leave time advanced during the first six months of employment.
- c. Members employed by the City prior to initiation of the flex leave program have had the current accrued vacation time

converted to flex leave on an hour for hour basis with the current sick leave placed in a bank to be used as provided in the Employee Policy Manual. Members entitled to use sick leave pursuant to Section the Employee Policy Manual and who are absent due to illness shall have their sick leave bank reduced by the duration of the absence unless the member notifies appropriate department personnel that the absence should be charged to the member's flex leave account.

- d. *Members shall be entitled to accrue flex leave up to a maximum of fifty-two (52) times the member's bi-weekly accrual rate. Earned flex leave in excess of the maximum permitted is currently paid bi-weekly at the member's hourly rate of pay. Effective July 1, 2012, earned leave in excess of the maximum permitted shall be deposited in the members "spillover bank". NBFA members may, at any time, elect to receive pay (at the member's normal hourly rate) for all accrued flex leave in excess of fifty-two (52) hours for a line employees and 40 hours for staff employees. However, NBFA members may not elect to buy down accrued Flex Leave below the current threshold for payment (fifty-two (52) times the member's bi-weekly accrual rate) unless, during the twelve months preceding the election, the member has taken at least ninety-six (96) hours of paid leave if a line employee and eighty (80) hours of paid leave if a staff employee. For the purposes of this section, Flex Leave shall include any earned paid leave such as vacation leave, compensatory time off, or holiday time.*
- e. All requests for scheduled flex leave shall be submitted to appropriate department personnel. In no event shall a member take or request flex leave in excess of the amount accrued.
- f. Flex Leave may be taken in four (4) hour increments.
- g. Members shall be paid for all accrued flex leave at their then current hourly rate of pay (hourly rate before incentives, other pays, etc.) upon termination of the employment relationship except as provided by Section 3(J).
- h. *Spillover Bank/Spillover Hours.*

Effective July 1, 2012, all hours currently accrued above the new accrual cap (52x the bi-weekly accrual rate) shall be deposited in a newly-created Spillover Bank and shall

become Spillover Hours. Flex leave hours used by the employee between July 1, 2012 and December 31, 2012 shall be drawn from the Spillover Bank, to the extent the unit member has adequate Spillover Hours.

Effective January 1, 2013, all remaining Spillover Hours and all hours turned in for cash conversion shall be deposited into the member's MERP account. From January 2, 2013 forward, hours held in the Spillover Bank are not subject to use by the employee and shall be converted, at the member's regular hourly rate, and deposited into the member's MERP account on an annual basis.

B. Telestaff System

The City has implemented "Telestaff" which phased out the Vacation Selection System (VSS). The City commits to maintain Telestaff subject to budgetary constraints outlined in this Section. The City shall, for each fiscal year during the term of this MOU, adopt a budget which provides for the payment of overtime specifically for the purpose of implementing Telestaff. The amount to be budgeted shall be calculated by computing the Vacation/Flex leave/Holiday time (leave) normally accrued by each member during a fiscal year (total annual leave) multiplying total annual leave, by that member's overtime rate of pay (value of leave) and then adding the value of leave for each NBFA member. Each member's overtime rate of pay shall be calculated on the basis of the member's highest anticipated rate of pay during the upcoming fiscal year. The total "value of leave" for all members shall be identified in the budget as the "LEAVE COVERAGE FUND." Notwithstanding, any other provision of this MOU, the Fire Chief shall have the sole discretion to take whatever action may be necessary to reduce overtime payments, including the temporary reduction of staffing levels or personnel, in the event payments for overtime out of the LEAVE COVERAGE FUND exceed 25% of the fund during the first three months of the fiscal year, 50% of the fund during the first six months of the fiscal year, or 75% of the fund during the first nine months of the fiscal year.

C. Vacation/Sick Leave

1. Administration of the vacation and sick leave program for members who have not converted to flex leave shall be in accordance with the provisions of the Employee Policy Manual of the City of Newport Beach. Line employees shall accrue sick leave at the rate of twelve (12) hours per month and staff employees shall accrue sick leave at the rate of eight (8) hours per month. Vacation Leave may be taken in six (6) hour increments.

NBFA members on the vacation/sick leave system shall accrue as follows:

<u>Years of Cont. Service</u>	<u>Leave Accrual Hours/Pay Period</u>
-----------------------------------	---

Line Employees

Less than 5	5.54
5 but less than 9	6.47
9 but less than 13	7.39
13 but less than 17	8.31
17 but less than 21	9.23
21 but less than 25	10.16
25 and over	11.08

<u>Years of Cont. Service</u>	<u>Leave Accrual Hours/Pay Period</u>
-----------------------------------	---

Staff Employees

Less than 5	3.70
5 but less than 9	4.31
9 but less than 12	4.93
12 but less than 16	5.54
16 but less than 20	6.16
20 but less than 25	6.77
25 and over	7.39

Maximum vacation accrual shall be fifty-two (52) times the member's bi-weekly accrual rate.

2. Sick Leave Conversion

Members who, at the end of any calendar year have a sick leave bank greater than a sum equal to eighty-six (86) times their normal bi-weekly sick leave accrual rate and who have used six (6) or fewer days during the calendar year, may elect to cover up to six (6) days of sick leave to three (3) days pay or, with the approval of the Fire Chief, three (3) days of vacation. Members shall elect to convert to sick leave within sixty (60) days after the end of any calendar year.

E. Holiday Time

1. Line Employees

The provisions of this subsection shall apply only to NBFA members who are line employees during all or a portion of any calendar year and, as to those members who are line employees for only a portion of the year, the provisions of this subsection shall be applicable on a pro-rata basis. NBFA members who are line employees shall accrue holiday time at the rate of 5.54 hours per pay period. Holiday time shall be added to the member's Flex Leave or Vacation Leave Account on a bi-weekly basis.

Effective October 1, 1996, all Line employees were provided a one-time opportunity to elect to convert all or any portion of their annual holiday benefits to cash on an annual basis. This election shall be uniform from year to year. For example, an employee electing to convert 108 of the 144 annual benefits to cash must so convert 108 hours of earned holiday benefits each year thereafter. The election to change holiday time to pay shall be in twelve (12) hour increments. Holiday pay will be paid bi-weekly with the regular check. Holiday leave conversion pay will not count in the total compensation formula used to adjust salaries and benefits.

This holiday compensation shall be reported to PERS as special compensation and shall be regarded as compensation earnable as defined in Government Code Sec. 20636 (c) (6) for purposes of computing retirement benefits and contributions.

Note: Newly hired employees shall be given a one-time option, within 60 days of employment, to elect to receive up to one-half of accrued holiday time as time off.

2. Staff Employees

Staff employees shall receive the following fully paid holidays:

New Years Day, Martin Luther King Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and the day after Thanksgiving, one-half day on Christmas Eve, Christmas, and one-half day on New Years Eve. In addition, Staff employees will be entitled to one floating holiday at the member's election.

Staff employees shall have the one-time option of accruing holiday time as pay. Staff employees may be required to take specified

City holidays off at the sole discretion of the Fire Chief. Time will be charged against the employee's flex (or vacation) leave bank.

F. Bereavement Leave

Bereavement leave shall be defined as "the necessary absence from duty by an employee having a regular or probationary appointment because of a death or terminal illness in his/her immediate family." Staff and Non-Safety employees shall be entitled to forty (40) hours of Bereavement Leave per calendar year per event while Line Employees shall be entitled to ninety (90) hours of Bereavement Leave. Bereavement leave shall be administered in accordance with the provisions of the Employee Policy Manual. For the purpose of this section immediate family shall mean father, mother, brother, sister, wife, husband, child, father-in-law, mother-in-law, grandparents, and spouse's grandparents. The provisions of this Section shall not diminish or reduce any rights a member may have pursuant to applicable provisions of State or Federal law.

G. Catastrophic Leave

Unit members may participate in the City's Catastrophic Leave Program.

H. Jury Duty

NBFA members who are assigned to line positions and are called to jury duty shall be excused for each twenty-four (24) hour shift during which the member is required to attend court and sit on a jury or await assignment.

I. Sick Leave Pay Out

Upon paid retirement, termination in good standing or death, but not termination for cause or resignation in lieu of termination, any member or his/her estate shall be paid, at the rate of 100% of their then current base hourly rate of pay (hourly rate before incentives, other pays, etc.) for a percentage of the employees accrued but unused Sick Leave computed as follows:

<i>Years of Service:</i>	<i>Percent of Unused Sick Leave Paid For:</i>
Less than 10	None
10 but less than 15	25%
15 but less than 20	37.5%
20 or more	50%

Payment for accrued but unused Sick Leave shall be limited to the first 800 hours of accrued Sick Leave for Staff Employees and the first 1200

hours for Line Employees (for example if a Line Employee had accumulated 1400 hours of Sick Leave and retired after 16 years he or she would receive Terminal Sick Leave Pay in a sum equal to 100% of their base salary per hour for 450 hours of Sick Leave – 1200 hours multiplied by .375).

J. Flex Leave Premium Pay Account

NBFA members shall have the right to receive pay, at the rate of 100% of their then current base salary, for any Flex Leave banked, up to a maximum of fifty-two (52) times their bi-weekly Flex Leave accrual rate as of June 30, 1994 (Flex Leave Premium Pay Account). The Flex Leave Premium Pay Account balance shall be shown on each member's regular pay stub. The Flex Leave Premium Pay Account shall be reduced in accordance with member purchases. Each member shall, upon termination, resignation, retirement or other separation from service, receive terminal pay at the rate of 100% of their then current base salary for all accrued Flex Leave to the full extent of the remaining balance in the Flex Leave Premium Pay Account with any remaining Flex Leave paid at the then current base salary. The provisions of this section shall apply only to members employed by the City of Newport Beach on or before June 30, 1994.

K. Vacation Leave Premium Pay Account

Members who are on the traditional Vacation/Sick Leave program as of June 30, 1994 shall be entitled to receive pay, at the rate of 100% of their then current base salary, for any accumulated Vacation Leave up to a maximum of fifty-two (52) times their bi-weekly Vacation Leave accrual rate as of June 30, 1994 (Vacation Leave Premium Pay Account). The Vacation Leave Premium Pay Account balance shall be shown on each members regular pay stub. The Vacation Premium Pay Account balance shall be reduced commensurate with member purchases. Each member shall, upon termination, resignation, retirement or other separation from service, receive terminal pay at the rate of 100% of their then current base salary for all accrued Vacation Leave to the full extent of the remaining balance in the Vacation Leave Premium Pay Account with any remaining Vacation Leave paid upon termination at the then current base salary. The provisions of this section shall apply only to members employed by the City of Newport Beach on or before June 30, 1994.

L. Worker's Compensation Leave

Any Safety NBFA employee who has been incapacitated by reason of any injury or illness which has been determined to have arisen out of or in the course of his or her employment shall receive compensation in

accordance with the provisions of Section 4850 *et. seq.* of the Labor Code of the State of California.

M. Scheduling of Medical Treatment for Industrial Injuries

Time spent by an employee receiving medical attention during the employee's normal working hours is considered hours worked and compensable, when the City or its representative schedules the appointment.

When an employee is temporarily disabled due to an industrial injury, and is unable to perform even limited duty in the workplace, all appointments, whether arranged by the City or the employees, shall be considered as occurring during normal working hours. The employee shall not be entitled to any additional compensation, regardless of the employee's regular work schedule or the type of compensation currently received, except as otherwise required by law.

When an employee has been released to either full or limited duty and has returned to the workplace, time spent receiving ongoing medical treatment, such as physical therapy or follow-up visits that are not scheduled by the City, is not considered hours worked and therefore, is not compensable. To avoid disruption in the workplace, an employee shall schedule such appointments to occur during off duty hours whenever possible. In the event such scheduling is not available, employee may be allowed to attend an appointment during their regularly scheduled duty shift with prior supervisory approval. Regular recurring appointments (i.e., weekly physical therapy) must be scheduled off duty.

N. Reassignment

In the event a line employee is reassigned to a staff position, or a staff employee is reassigned to a line position, the City shall automatically convert the Flex Leave, Vacation Leave, Sick Leave, Bereavement Leave and other benefits from the position previously held to the newly assigned position provided, however, upon reassignment a line employee shall be entitled to either receive pay for accrued holiday time or add accrued holiday time to the member's Flex Leave or Vacation Leave account. The ratio for conversion of staff employee benefits to line employee benefit shall be 7/5 and the ratio for converting line employee benefits to staff employee benefits shall be 5/7.

SECTION 4. – Fringe Benefits

A. Insurance

1. Benefits Information Committee

City has established a Benefits Information Committee (BIC) composed of one representative from each employee association group and up to three City representatives. The Benefits Information Committee has been established to allow the City to present data regarding carrier and coverage options, the cost of those options, appropriate coverage levels and other health programs. The purpose of the BIC is to provide each employee group with information about health insurance/programs and to receive timely input from associations regarding preferred coverage options and levels of coverage.

2. Medical Insurance

The City has implemented an IRS qualified Cafeteria Plan. In addition to the amounts listed below, the City shall contribute the minimum CalPERS participating employer's contribution towards medical insurance. Employees shall have the option of allocating Cafeteria Plan contributions towards the City's existing medical, dental and vision insurance/programs. The City and the Newport Firefighter Association will cooperate in pursuing additional optional benefits to be available through the Cafeteria Plan.

Any unused Cafeteria Plan funds shall be payable to the employee as taxable cash back. Employees shall be allowed to change coverages in accordance with plan rules and during regular open enrollment periods.

Effective the pay period beginning on or immediately or after:

- *January 1, 2012, the City's contribution towards the Cafeteria Plan will increase to \$1,149.00 (plus the minimum CalPERS participating employer's contribution).*
- *January 1, 2013, the City's contribution towards the Cafeteria Plan will increase to \$1,174.00 (plus the minimum CalPERS participating employee's contribution).*
- *January 1, 2014, the City's contribution towards the Cafeteria Plan will increase to \$1,274.00 (plus the minimum CalPERS participating employee's contribution).*

NBFA members who do not want to enroll in any medical plan offered by the City must provide evidence of group medical insurance coverage, and execute an opt-out agreement releasing the City from any responsibility or liability to provide medical insurance coverage on an annual basis.

Those members participating in the opt-out program shall be permitted to cash out no more than \$1,149.00 monthly.

3. Dental Insurance

The existing or comparable dental plans shall be maintained as part of the City's health plan offerings as agreed upon by the Benefits Information Committee.

4. Vision Insurance

The existing or a comparable vision plan shall be maintained as part of the City's health plan offerings as agreed upon by the Benefits Information Committee.

5. Changes in Insurance Carriers and Coverages

There shall be no change in Insurance carriers or coverages during the term of this agreement unless the City has given prior notice to the Association and, upon request, met and conferred.

B. Additional Health Insurance/Programs

1. IRS Section 125 Flexible Spending Account

Section 125 of the Internal Revenue Code authorizes an employee to reduce taxable income for payment of allowable expenses such as child care and medical expenses. The City shall maintain a "reimbursable account program" in accordance with the provisions of Section 125 of the Internal Revenue Code, pursuant to which an Association member may request that medical, child care and other eligible expenses be paid or reimbursed by the City out of the employee's account. The base salary of the employee will be reduced by the amount designated by the employee for reimbursable expenses.

2. Disability Insurance

The City shall provide Short-term (STD) and Long-term (LTD) disability insurance to all regular full time employees with the following provisions:

Weekly Benefit	66.67% gross weekly wages
Maximum Benefit	\$10,000/month
Minimum Benefit	\$50.00
Waiting Period	30 Calendar Days

Employees shall not be required to exhaust accrued paid leaves prior to receiving benefits under the disability insurance program. Employees may not supplement the disability benefit with paid leave once the waiting period has been exhausted.

Concurrent with the commencement of this program, employees assumed responsibility for the payment of the disability insurance cost in the amount of one (1.0%) percent of base salary. Simultaneously, the City increased base wages by one (1.0%) percent.

3. Life Insurance

The City shall provide life insurance for all regular full-time employees in \$1,000 increments equal to one times the employee's annual salary up to a maximum of \$50,000. At age 70 the City-paid life insurance is reduced by 50% of the pre-70 amount. This amount remains in effect until the employee retires from City employment.

C. Employee Assistance Program

City shall provide an Employee Assistance Program (EAP) through a properly licensed provider. Association members and their family members may access the EAP subject to provider guidelines.

D. The Retirement Benefit (Superseding inconsistent April 13, 2010 SUPPLEMENTAL MOU and inconsistent 2008-2010 MOU provisions)

1. Current Non-Sworn Members (Miscellaneous)

- a. Pursuant to a separate agreement, miscellaneous (non-safety) unit members have agreed to have **2.42%** of the employer retirement cost added to the employee's rate pursuant to California Government Code Section 20516. Non-safety employees now pay **3.42%** of retirement costs (2.42% employer cost sharing [ER side] and 1% employee

normal member contribution ["EE side"]) on a pre-tax basis pursuant to IRS Code Section 414(h)(2).

Effective the first payroll period commencing on and after City Council adoption of this 2012-2014 MOU, non-safety member employees shall in addition to the cost sharing provision described above, pay an additional 3.08% of compensation as and for the individual members normal employee PERS contributions required to be paid by PERS. Said payment shall be made on a pre-tax basis pursuant to IRS Code Section 414(h)(2) and pursuant to Government Code §20516 and §20691.

At this point, non-safety members will be contributing 4.08% (EE) and 2.42% (ER) for a total of 6.5%.

Effective the first payroll period on or after January 1, 2013, non-safety member employees shall in addition to the cost sharing provision described above, pay an additional 1.5% of compensation as and for the individual member's normal employee PERS contributions required to be paid by PERS. Said payment shall be made on a pre-tax basis pursuant to IRS Code Section 414(h)(2) and pursuant to Government Code §20516 and §20691.

At this point, non-safety member will be contributing 5.58% (EE) and 2.42% (ER) for a total of 8%.

Effective at such time as one or more of the City's other Miscellaneous units agrees to an additional employee contribution within this MOU term, NBFA Miscellaneous unit members' contributions shall match that contribution and shall receive any corresponding salary or benefit adjustment, which is specifically designated by the City and the other miscellaneous employee(s) unit(s) as an offset to such additional member contributions.

2. Current Sworn Members

- a. The City provides the Public Employees' Retirement System retirement formula of 3% at 50.
- b. Effective the first payroll period commencing on and after the adoption of this MOU and in accordance with PERS Regulations, sworn unit members have agreed to a total PERS employee contribution of 3.5% pursuant to California Government Code §20516 and §20691 on a pre-tax basis

pursuant to IRS Code §414(h)(2). City shall contribute 5.5% of the employee contribution pursuant to Government Code §20691 and shall report the value of the 5.5% as EPMC under Government Code §20636(c)(4).

- c. Effective the first payroll period commencing on and after January 1, 2013, sworn unit members agreed to a total PERS employee contribution of 7.0% pursuant to California Retirement Code §20516 and §20691 on a pre-tax basis pursuant to IRS Code §414(h)(2).
 - d. Effective the first payroll period commencing on and after January 1, 2014, sworn unit members agreed to a total PERS employee contribution of 9% pursuant to California Government Code §20516 and §20691 on a pre-tax basis pursuant to IRS Code §414(h)(2).
3. The City's contract with PERS for current hires shall also provide for:
- a. A 3% @ 50 retirement formula and the highest year benefit pursuant to the provisions of §21252.01 and §20042 of the California Government Code for safety employees hired before the first payroll period commencing on or after the adoption of this MOU.
 - b. The military buy-back provisions pursuant to §20996 of the California Government Code.
 - c. The Level 4 1959 Survivors Benefits pursuant to §21574 of the California Government Code.
4. To the extent during the term of this Memorandum of Understanding, that the City pays a portion of the normal PERS contributions of members (sworn and non-sworn), said payments shall be reported to PERS as special compensation as is authorized by Government Code §20636(c)(4).

Payment by any unit member of the individual member's normal employee PERS contributions required to be paid by PERS, shall not be reported to PERS as special compensation as was authorized by Government Code §20636(c)(4) or by any other authority.

1. New Hires – 2nd Tier. All employees hired following City Council adoption of this 2012-2014 Memorandum of Understanding and

implementation of the necessary PERS contract amendments shall be subject to the following retirement benefits.

- a. Safety personnel – the 2% at 50 retirement formula with the retiree's annuity being calculated based upon the employee's highest average annual compensation earnable during any period of three consecutive years of employment during membership in CalPERS.
- b. Miscellaneous personnel – the 2% at 60 retirement formula with the retiree's annuity being calculated based upon the employee's highest average annual compensation earnable during any period of three consecutive years of employment during membership in CalPERS.
- c. All such hires shall pay 100% of the statutorily mandated employee PERS contribution.
- d. Unless specifically modified herein, said newly hired employees shall be subject to other then-existing City-PERS contract provisions.
- e. To the extent allowed by PERS, the IRS and other applicable regulatory agencies and laws, unit members who shall be enrolled in the 2% at 50 retirement formula, shall be eligible to participate in a Defined Contribution plan (Plan) to be administered by the City or its designee in accordance with said regulatory agency regulations and laws. The Plan shall be funded by allowing each affected employee to contribute any amount (unless statutorily capped or capped by the Plan) of base salary each payroll period. The City shall match any such employee contribution up to 1.5% of base salary per year. The employee-only contributions shall be deemed fully vested at the time of its deposit. The employer-only matching contribution shall vest upon a PERS retirement being implemented as follows: 100% - age 55+; 80% - age 54; 60% - age 53, 40% - age 52; 20% - age 51. ("Age" at time of retirement being effective.) In the event that a participant in the Plan has a medical retirement earlier than the vesting above, he or she shall be deemed 100% vested upon the date of the medical retirement.

E. Retiree Medical Benefit

1. Background

In 2005, the City and all Employee Associations agreed to replace the previous “defined benefit” retiree medical program with a new “defined contribution” program. The process of fully converting to the new program will be ongoing for an extended period. During the transition, employees and (then) existing retirees have been administratively classified into one of four categories. The benefit is structured differently for each of the categories. The categories are as follows:

- a. Category 1 - Employees newly hired after January 1, 2005.
- b. Category 2 - Active employees hired prior to January 1, 2006, whose age plus years of service as of January 1, 2005 was less than 50 (46 for public safety employees).
- c. Category 3 - Active employees hired prior to January 1, 2006, whose age plus years of service was 50 or greater (46 for public safety employees) as of January 1, 2005.
- d. Category 4 - Employees who had already retired from the City prior to January 1, 2006, and were participating in the previous retiree medical program.

2. Program Structure

This is an Integral Part Trust (IPT) Medical Expense Reimbursement Program Plan (MERP).

- a. For employees in Category 1, the program is structured as follows:

Each employee will have an individual MERP account for bookkeeping purposes, called his or her “Employee Account.” This account will accumulate contributions to be used for health care expense after separation. All contributions to the plan are either mandatory employee contributions or City paid employer contributions, so they are not taxable to employees at the time of deposit. Earnings from investment of funds in the account are not taxable when posted to the account. Benefit payments are not taxable when withdrawn, because the plan requires that all distributions be spent for specified health care purposes.

Contributions will be in three parts.

Part A contributions (mandatory employee contributions): 1% of Salary.

Part B contributions (employer contributions): \$2.50 per month for each year of service plus year of age (updated every January 1st based on status as of December 31st of the prior year).

Part C contributions (leave settlement as determined by Association):

The Association will determine the level of contribution for all employees it represents, subject to the following constraints. All employees within the Association must participate at the same level, except that Safety members and Non-safety members within an Association may have different levels. The participation level should be specified as a percentage of the leave balance on hand in each employee's leave bank at the time of separation from the City.

For example, if the Association wishes to specify 50% of the leave balance as the participation level, then each member leaving the City, or cashing out leave at any other time, would have the cash equivalent of 50% of the amount that is cashed out added to the MERP, on a pre-tax basis. The remaining 50% would be paid in cash as taxable income. Individual employees would not have the option to deviate from this breakout.

The Association has decided to participate in Part C contributions at the level of fifty percent (50%) flex and sick. This amount may be changed, on a go forward basis, as part of a future meet and confer process. However, the participation level must be the same for all employees within the Association except that Safety members and Non-safety members within an Association may have different levels. Additionally, the purpose and focus of these changes should be toward long-term, trend type adjustments. Due to IRS restrictions regarding "constructive receipt," the City will impose restrictions against frequent spikes or drops that appear to be tailored toward satisfying the desires of a group of imminent retirees.

Nothing in this section restricts taking leave for time off purposes.

Sick leave balances may also be included in the MERP Part C contributions, but only to the extent and within all the numeric parameters specified in the Employee Policy Manual. Section 11.21 of the Manual contains a schedule, which specifies the amount of sick leave that can be "cashed out," based on time of service. The manual also caps the number of hours that can be "cashed out" at

800, and specifies that sick leave hours are “cashed out” on a 2 for 1 basis (800 hours of sick leave are converted to 400 hours for cash purposes). Sick leave participation is a separate item from vacation/flex leave participation, and thresholds must be separately identified by the Association.

Part A contributions may be included in PERS compensation. Part B and Part C contributions will not be included in PERS compensation.

Part A contributions begin upon enrollment in the program and are credited to each MERP Employee Account each pay period. Eligibility for Part B contributions is set at five years of vested City employment. At that time, the City will credit the first five years worth of Part B contributions into the Employee Account (interest does not accrue during that period). Thereafter, contributions are made bi-weekly. Part C deposits, if any, will be made at the time of employment separation.

Each Employee has a right to reimbursement of medical expenses (as defined below) from the Plan until the Employee Account balance is zero. This right is triggered upon separation. If an employee leaves the City prior to five years employment, only the Part A contributions and Part C leave settlement contributions, if any, will be in the MERP Employee Account. Such an employee will not be entitled to any Part B contributions. The exception to this is a full-time employee, participating in the program, who leaves the City due to industrial disability during the first five years of employment. In such cases, the employee will receive exactly five years worth of Part B contributions, using the employee’s age and compensation at the time of separation for calculation purposes. This amount will be deposited into the employee’s MERP account at the time of separation.

Distributions from MERP Employee Accounts are restricted to use for health insurance and medical care expenses after separation, as defined by the Internal Revenue Code Section 213(d) (as explained in IRS Publication 502), and specified in the Plan Document. In accordance with current IRS regulations and practices, this generally includes premiums for medical insurance, dental insurance, vision insurance, supplemental medical insurance, long term care insurance, and miscellaneous medical expenses not covered by insurance for the employee and his or her spouse and legal dependents – again only as permitted by IRS Publication 502. Qualification for dependency status will be determined by guidelines in IRC 152. If used for these purposes, distributions from the MERP accounts will not be taxable. Cash withdrawal for any other purpose is prohibited. Under recent IRS Revenue Ruling 2005-24, any

balance remaining in the Employee Account after the death of the employee and his or her spouse and/or other authorized dependents (if any) must be forfeited. That particular MERP Employee Account will be closed, and any remaining funds will become general assets of the plan.

The parties agree that the City's Part B contributions during active employment constitute the minimum CalPERS participating employer's contribution towards medical insurance after retirement. The parties also agree that, for retirees selecting a CalPERS medical plan, or any other plan with a similar employer contribution requirement, the required City contribution will be withdrawn from the retiree's MERP account.

- b. For employees in Category 2, the program is the same as for those in Category 1, with the following exception:

In addition to the new plan contributions listed above, current employees who fully convert to the new plan will also receive a one-time City contribution to their individual MERP accounts that equates to \$100 per month for every month they contributed to the previous "defined benefit" plan, to a maximum of 15 years (180 months). This contribution will be made only if the employee retires from the City and at the time of retirement. No interest will be earned in the interim.

Employees in Category 2 who had less than five years service with the City prior to implementation of the new program will only receive Part B contributions back to January 1, 2006 when they reach five years total service.

- c. For employees in Category 3, the program is the same as for those in Category 2, with the following exception:

For employees in this category, the City will make no Part B contributions while the employees are still in the active work force. Instead, the City will contribute \$400 per month into each of their MERP accounts after they retire from the City, to continue as long as the employee or spouse is still living.

Each employee will contribute a flat \$100 per month to the plan for the duration of their employment to partially offset part of this expense to the City. The maximum benefit provided by the City after retirement is \$4,800.00 per year, accruing at the rate of \$400.00 per month. There is no cash out option for these funds, and they may not be spent in advance of receipt.

Employees in this category will also receive an additional one-time City contribution of \$75 per month for every month they contributed to the previous plan prior to January 1, 2006, up to a maximum of 15 years (180 months). This contribution will be made to the MERP account at the time of retirement, and only if the employee retires from the City. No interest will be earned in the interim.

- d. For employees (retirees) in Category 4, the structure is very similar to the previous retiree medical program, except that there is no cost share requirement, and the \$400 City contribution after retirement can be used for any IRS authorized purpose, not just City insurance premiums.

Effective July 1, 2006, a MERP account has been opened for each retiree in this category, and the City will contribute \$400 per month to each account as long as the retiree or spouse remains living.

3. Administration

Vendors have been selected by the City to administer the program. The contract expense for program-wide administration by the vendor will be paid by the City. However, specific vendor charges for individual account transactions that vary according to the investment actions taken by each employee, such as fees or commissions for trades, will be paid by each employee.

The City's Deferred Compensation Committee, or its successor committee, will have the authority to determine investment options that will be available through the plan.

4. Value of Benefit

For all purposes, including compensation comparisons, the Retiree Medical Program shall be valued at 1% of salary on which PERS retirement is based (Part A); plus .25% of other compensation (Part B).

F. Tuition Reimbursement and Training

Maximum tuition reimbursement (for both college courses and non-college authorized courses) for NBFA members shall be \$1,500 per fiscal year.

1. College Courses

NBFA members attending accredited community colleges, colleges, trade schools or universities may apply for reimbursement of one hundred percent (100%) of the actual cost of tuition, books, fees or

other student expenses for approved job-related courses. Reimbursement is contingent upon the successful completion of the course. Successful completion means a grade "C" or better for undergraduate courses and a grade "B" or better for graduate courses. All claims for tuition reimbursement require the approval of the Human Resources Director.

College courses taken in pursuit of a degree that would render the employee eligible to receive scholastic pay compensation shall not be eligible for tuition reimbursement.

Career development courses and vocational courses offered through a college shall be eligible for tuition reimbursement provided they meet the definition of pre-authorized or prior approval is received from the Department Training Chief. Examples include, but are not limited to: California State Fire Marshal Courses and CICCIS Courses.

2. Non-College Courses

NBFA members attending job-related classes, courses, and seminars given by recognized agencies, organizations or individuals other than accredited college institutions may apply for reimbursement of one hundred percent (100%) of the actual cost of tuition, parking fees, travel and lodging expenses.

Job-related courses, training and seminars will be considered pre-authorized in the following areas: Management and supervision, oral and written communications, conflict resolution, legal issues, and media relations, risk management, fire ground operations, rescue systems, EMS, health and safety, apparatus operator, auto extrication, fire prevention, arson investigation, and critical incident stress management.

Reimbursement is contingent upon the successful completion of the course. Successful completion means a document or certificate showing successful completion of the class or seminar. All claims for tuition reimbursement require the approval of the Fire Training Battalion Chief before submittal to Human Resources.

3. Training – Training Bank

Each member shall have forty-eight (48) hours placed in an annual "Training Flex Bank" on July 1, 2012 and on July 1, 2013. The 48 hours may be used, at the discretion of the member, in one fiscal year for courses or seminars in the following areas:

Fire ground operations, rescue systems, EMS, health and safety, apparatus operator, auto extrication, fire prevention, arson investigation, technical rescue (including confined space and trench rescue), CICCIS courses (wildland/urban interface training courses), State Fire Marshal courses, and critical incident stress management.

Hours may be used for travel time to leave from and/or return to the employee's assigned work location in addition to the hours spent during training. A maximum of 12 hours for 56 hour per week employees and 8 hours for 40 hour per week employees may be used during any one regularly-scheduled shift. Additional time required shall be deducted from the member's personal Flex leave bank. Hours in the bank are "use or lose" per employee per Fiscal Year and may not be carried over to a subsequent Fiscal Year.

A member's proposed use of this Training Bank time may be denied if it requires the Department to mandatory backfill, to force hire, or in the event that the jurisdictional Assistant Fire Chief finds that operational needs reasonably preclude a represented employee's release for training.

This Training Bank shall begin July 1, 2012 and shall expire June 29, 2014 and shall not continue into the next MOU period unless otherwise renegotiated.

4. Training – Worker's Comp.

Employees of the Newport Beach Fire Department will be considered within the definition of course of employment and arising out of employment for purposes of workers compensation coverage when they have been authorized by the Fire Chief to attend pre-approved training that furthers the department's mission in providing fire and medical public safety services to the community.

G. Fitness Program

All NBFA members shall participate in the Department Fitness Program as outlined in Department SOP.

H. Physical Conditioning Equipment

1. City has acquired fitness equipment for use by members in maintaining physical fitness. City shall budget \$12,000 per year for the acquisition, maintenance, repair, improvement, or replacement of fitness equipment. Up to \$10,000 may be carried over to a

subsequent fiscal year(s). An additional \$10,000 shall be budgeted to equip any new stations built during the term of this agreement.

2. City shall provide workout apparel for each NBFA member assigned to fire suppression. Workout apparel shall consist of three workout shirts and two trunks. All NBFA members on duty between the hours of 4:00 p.m. one day and 7:30 a.m. the next, shall wear either the approved workout apparel, or the approved NBFD uniform.

SECTION 5. – Miscellaneous Provisions

A. Reductions in Force/Layoffs

The provisions of this section shall apply when the City Manager determines that a reduction in the work force is warranted because of actual or anticipated reductions in revenue, reorganization of the work force, a reduction in municipal services, a reduction in the demand for service or other reasons unrelated to the performance of duties by any specific employee. Reductions in force are to be accomplished, to the extent feasible, on the basis of seniority within a particular Classification or Series and this Section should be interpreted accordingly.

1. Definitions

- A. Layoff or Layoffs shall mean the non-disciplinary termination of employment.
- B. "Seniority" shall mean the time an employee has worked in a specific Classification within a Series calculated from the date on which the employee was first granted permanent status, subject to the following:
 - i. Credit shall be given only for continuous service subsequent to the most recent appointment to permanent status in the Classification or Series;
 - ii. Seniority shall include time spent on industrial leave, military leave and leave of absence with pay, but shall not include time spent on any other authorized or unauthorized leave of absence.
 - iii. For purposes of determining layoffs within the Classification of Firefighter, seniority shall mean the time an employee has worked within the Series from Firefighter to Captain.

- C. "Classification" shall mean one or more full time positions identical or similar in duties and embraced by a single job title authorized in the City budget and shall not include part-time, seasonal or temporary positions. Classifications within a Series shall be ranked according to pay (lowest ranking, lowest pay).
- D. "Series" shall mean two or more Classifications within a Department which require the performance of similar duties with the higher ranking Classification(s) characterized by the need for less supervision by superiors, more difficult assignments, more supervisory responsibilities for subordinates. The City Manager shall determine those Classifications which constitute a Series.
- E. "Bumping Rights", "Bumping" or "Bump" shall mean the right of an employee in a higher Classification who is subject to layoff to displace a less senior employee in a lower Classification within the Series. No employee shall have the right to Bump into a Classification for which the employee does not possess the minimum qualifications such as specialized education, training or experience, provided, however, the City shall allow an employee to become recertified as a paramedic in the event the employee's certification has expired due to promotion to another position. An employee has the right to Bump into only those positions the employee has previously held with the Department.

2. Procedures

In the event the City Manager determines to reduce the number of employees within a Classification, the following procedures are applicable:

- a. Temporary and probationary employees within any Classification shall, in that order, be laid off before permanent employees.
- b. Employees within a Classification shall be laid off in inverse order of seniority.
- c. An employee subject to layoff in one Classification shall have the right to Bump a less senior employee in a lower ranking Classification within a Series, provided, however, that the determination of the employee to be terminated from the position of Firefighter shall be based on seniority within the Series. An employee who has Bumping Rights shall notify the Department Director within seven (7) working days after notice of layoff of his/her intention to exercise Bumping Rights.

- d. In the event two or more employees in the same Classification are subject to layoff and have the same seniority, the employees shall be laid off in inverse order of their position on the eligibility list or lists from which they were appointed. In the event at least one of the employees was not appointed from an eligibility list, the Department Director shall determine the employee(s) to be laid off.

3. Notice

Employees subject to layoff shall be given at least thirty (30) days advance notice of the layoff or thirty (30) days pay in lieu of notice. In addition, employees laid off will be paid for all accumulated paid leave, holiday leave (if any), and accumulated sick leave to the extent permitted by the Employee Policy Manual.

4. Re-Employment

Permanent and probationary employees who are laid off shall be placed on a Department re-employment list in reverse order of layoff. The laid off former employee shall remain on the reemployment list for not to exceed two (2) years from the date of layoff. In the event a vacant position occurs in the Classification which the employee occupied at the time of layoff, or a lower ranking Classification within a Series, the employee at the top of the Department re-employment list shall have the right to appointment to the position, provided, he or she reports to work within seven (7) days of written notice of appointment. Notice shall be deemed given when personally delivered to the employee or deposited in the U.S. Mail, certified, return receipt requested, and addressed to the employee at his or her last known address. Any employee shall have the right to refuse to be placed on the re-employment list or the right to remove his or her name from the re-employment list by sending written confirmation to the Human Resources Director.

5. Severance Pay

Permanent employees who are laid off shall, as of the date of lay-off, receive one-week severance pay for each year of continuous service with the City of Newport Beach, but in no case, to exceed ten (10) weeks of severance compensation.

B. Discipline Plan

Any discipline shall be in accordance with Department SOP and the Employee Policy Manual.

C. Fire Suppression Equipment Staffing Levels

The City shall not reduce current staffing levels for fire suppression equipment during the term of this MOU. The City believes that appropriate staffing levels call for three (3) fire suppression personnel for each engine company and four (4) fire suppression personnel for each truck company. Nothing in this Section shall preclude the Fire Chief or his designee from varying from this "per equipment" staffing level for a brief period in the event that maintaining the prescribed staffing level per piece of equipment is not feasible or appropriate because of a temporary operational need.

D. EMT Certification

All members are required to attend regularly scheduled departmental EMT certification classes. Any member, except members who are paramedic certified, who misses, or anticipates missing, a regularly scheduled EMT certification class shall contact the Fire Chief or his/her designee in an attempt to schedule a makeup session, provided, however, members may view videotaped classes to make up for absences from a regularly scheduled class in accordance with County and State requirements. If a makeup session is not available within the program schedule established by the Department, the member shall, prior to loss of certification, attend a Departmental session or class offered by a public or private institution on the member's own time and without compensation by the City.

E. No Smoking

All employees hired after January 1, 1999 shall not smoke or use any tobacco products at any time while on, or off, duty. Employees shall be required to sign an agreement consistent with this section. Violation of the agreement may subject the employee to disciplinary action. Employees shall have input into the agreement to be developed.

Smoking an occasional celebratory cigar (birth of a child, etc.) while off-duty shall not be considered a violation of this section.

F. Fire Inspection Classifications

Existing flexible staffing provisions in Fire Prevention Classifications shall remain in effect for the term of this agreement.

G. Exposure Log

The City maintains an exposure log system.

H. Grievance Procedure

Except as described herein, unit employees are covered by the grievance procedure contained in the Employee Policy Manual. However, the parties agree that Step 1 of the manual shall be deemed to define either a Captain or Battalion Chief as the "immediate supervisor," Step 2 of the grievance procedure shall be presided over the Fire Chief, and Step 3 of the grievance procedure shall be the City Manager. The City Manager shall render the final and binding grievance determination.

I. 48/96 Schedule

The Fire Department currently operates with a 48/96 schedule. A City proposal to modify this schedule shall be subject to meet and confer.

Signatures are on the next page.

Executed this 22nd day of May, 2012:

NEWPORT BEACH FIREFIGHTERS ASSOCIATION

By: Brian McDonough
Brian McDonough, NBFA President

CITY OF NEWPORT BEACH

By: Nancy Gardner
Nancy Gardner, Mayor

ATTEST:

By: Leilani Brown
Leilani Brown, City Clerk



APPROVED AS TO FORM:

Aaron Harp
Aaron Harp, City Attorney

Attachment: (1) Exhibit "A" NBFA Represented Classifications

Newport Beach Firefighters Association Represented Classifications
Exhibit A

Firefighter Series

Fire Fighter

Engineer

Paramedic

Captain

Fire Prevention Series

Fire Inspector, Non-Safety

Fire Prevention Specialist, Non-Safety

Fire Prevention Plans Examiner, Non-Safety